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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,314	04/10/2001	Christophe Dupont	112701-239	4353

29157 7590 06/03/2003

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 06/03/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/833314

Applicant(s)

DUPONT ET AL

Examiner

S. WEINSTEIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 2/19/03

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1-17 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-17 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____.

☐ Copies of the certified copies of the priority documents have been received

in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

Office Action Summary

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over May et al (WO 98/05219) in view of Quaker Oats (GB 1327351) and Bechtel (3,738,847), further in view of Gutmann (2,421,199), Froebel et al (GB 2,194,125), Zitin (2,937,095), Dodge et al (3,385,712) and Vickers (GB 341,760), further in view of Ohba (EP 769252), Henkel (GB 1486634), Mandanas (WO 94/26606), Routh (2344,901) McMahon (GB 1583351), Erras (EP 675046), Hillebrand (Austral. 50797/96) and QP Corp (Jp 59-31677) and QP Corp (Jp 61-100174).

The rejection is essentially same for the reasons extensively detailed in the last Office action mailed 11/14/2002, paper no. 6. As noted previously, claims 1 and 6 differ from May et al only in the recitation that the outer phase is tubular, (if one construes tubular to be a hollow cylinder) because the outer phase of May et al is hollow but frusto-conical. A series of references were previously cited to show that it was notoriously old in the packaging art to provide edible or inedible products with various shaped inner and outer phases. Applicants have not conceded that the difference between the claims and the art taken as a whole was an obvious matter of design; i.e., the substitution of one geometrical shape for another geometrical shape. To further evidence the conventionality of an inner phase and a tubular outer phase and to emphasize applicants are not the first to provide this specific geometric configuration,

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Gutmann, Froebel et al, Zitin, Dodge et al and Vickers, all previously cited but not applied, are relied on to teach that a tubular outer phase and inner core composite food is, of course, notoriously old. To modify May et al and substitute one conventional geometric configuration for the composite food for another conventional geometric configuration for the composite food would therefore have been unequivocally obvious. The remaining references are applied for the reasons given in the Office action mailed 11/14/02, paper no. 6. Note, e.g., that both Quaker Oats and Bechtel disclose a canned composite pet food that has an outer phase and an inner phase and the only real difference between the two and applicants' claim 1 is whether in the references one could call the outer phase tubular even though it fully encloses the inner phase. Note, too, the two references use applicants' filling technique.

All of applicants' remarks filed 2/19/03, paper no. 7 have been fully and carefully considered but are not found to be convincing. Patentability is not predicated on the number of references applied, but what the art taken as a whole teaches. See. In re Gorman 18USPQ 2d, 1886. In fact, in In re Gorman, the Court noted that where teachings relied upon to show obviousness were repeated in a number of references, the conclusion of obviousness was strengthened. It is noted that applicants main reason for the composite product is to provide new and interesting appearances. May et al and the art taken as a whole does that. It is urged that the art taken as a whole does not teach a tubular outer phase specifically relating to food. This issue is hopefully now moot in view of the new ground of rejection. However, even if these new references were not applied, whether the secondary references were edible or inedible

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would be irrelevant since they were only be relied on the teach conventional, obvious, geometric shapes. Finally, it is urged that applicants do not believe that the May products are suitable for use in larger cans. This urging is merely an opinion, not supported by any factual, probative, evidence. In any case, the urging is not convincing since Quaker Oats, for example, discloses tall containers. Note, too, applicants have not responded to the examiners query concerning the nature of the container of May et al. that was ^{made} in the last Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Weinstein whose telephone number is 703-308-0650. The examiner can normally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

S. Weinstein/mn
May 20, 2003


STEVE WEINSTEIN
PRIMARY EXAMINER 1761